

REMARKS

SUBSTANCE OF INTERVIEW

Applicant gratefully acknowledges the telephonic interview conducted on May 6, 2003, between Applicant's representatives Albin H. Gess and Robert Skone James and Examiner Jason P. Salce and SPE Andrew Faile.

The interview summary of May 12, 2003, prepared by the Examiner correctly reflects the substance of the interview. The teaching of Lappington and Lyons of record with respect to the recitation of the invention in independent claim 1 was discussed. No agreement was reached.

RESPONSE TO OFFICE ACTION OF APRIL 9, 2003

Claims 3 and 5 – 13 remain in this application. Applicant respectfully request reexamination.

Claims 1 – 2 and 6 – 11 were rejected under 35 U.S.C. §103 (a) as unpatentable over Lappington et al. (5,734,413) in view of Lyons (5,864,557). Applicant respectfully traverses.

The office action correctly notes that Lappington “fails to teach a method of monitoring the data transmitted to determine a satisfactory predetermined time period”. Although Lappington monitors data for other reasons, Lappington therefore fails “to teach using these methods of monitoring to determine a satisfactory predetermined time period”. The office action cites to column 3, lines 4 – 10 of Lyons for a teaching that “the priority list is modified in such a manner as to insure that a packet containing data from the opportunistic data component signal is

generated with sufficient time regularity to guarantee that the block of data is transferred within the predetermined time period”.

The goal of Lyons to “guarantee that the block of data is transferred within the predetermined time period” is directed to the desire to transmit data having a predetermined size within a predetermined time period (column 5, lines 55 – 60). Knowing the quantity of data bytes, the number of packets required to transmit the data is calculated. Knowing the entire time period over which all the data must be transmitted, the amount of time between packet transmission is calculated (column 5, lines 60 – 67, column 6, lines 1 –3). Once the time between data packet transmission has been predetermined, the microprocessor is instructed to insert each opportunistic data packet at the highest priority entry into the list for generating the next packet group every time a data packet must be transmitted (column 6, lines 4 – 20).

In contrast to the above predetermined scheduling, the present invention, as set forth in claims 8 and 10, in addition to relying on the allocated priority, actively monitors the data remaining to be transmitted, while data is being transmitted, to determine whether the remaining data will be transmitted within a satisfactory predetermined time period. If it turns out the remaining data will not be transmitted within the predetermined time period, the priority of the remaining data is changed so that it will be transmitted within the predetermined time period.

Lyons assigns a highest priority level to his opportunistic packets and inserts them at predetermined times for transmission. The present invention transmits data according to its allocated priorities, while at the same time monitoring to insure that the remaining data will be transmitted within the predetermined time period, and changing the priority of the remaining data if it appears that is required to transmit the remaining data within the predetermined time period.

The triggering of a change of priority of the transmitted data in response to a monitoring step is simply not taught or even contemplated in Lyons or Lappington.

Applicant respectfully requests withdrawal of this rejection, all the claims of record be allowed and this application passed to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Mail Stop CPA, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 9, 2003.

By: _____

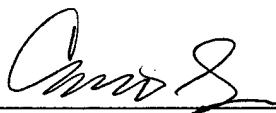
James Lee

Signature

Dated: July 9, 2003

Very truly yours,

SNELL & WILMER L.L.P.



Albin H. Gess
Registration No. 25,726
1920 Main Street, Suite 1200
Irvine, California 92614-7230
Telephone: (949) 253-2720